IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1896 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DALPATBHAI K MAYAVANSHI

Versus

G S R T C

Appearance:

1. Special Civil Application No. 1896 of 1997

MR MUKESH H RATHOD for Petitioner No. 1

M/S THAKKAR ASSOC. for Respondent No. 1

RULE SERVED for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 18/03/2004

ORAL JUDGEMENT

The petitioner has challenged the order passed by the Divisional Director, State Transport, Surat dated 6th

April, 1996, whereby his appeal has been partly allowed and in place of lowering down six steps from basic pay, it has been reduced to lowering down five steps from basic pay. He has also challenged the original order of the second appellate authority dated 30th November, 1994 passed by respondent no. 3.

1.1. It appears that the petitioner on the relevant date i.e. on 27th October, 1994, was discharging duties as conductor in the bus plied in the rural area of Surat. It was going from Surat to Rudhwada. At about 8:55 in the morning, it reached the place called Vihan. At that place surprise checking was done and during checking it was found that in all there were 39 passengers travelling in the said bus. There were 16 passengers amongst them, who had boarded the bus from village Sevani and they were to go to village Vihan. Those passengers did not possess ticket worth Rs.1=25 paise each. The checking squad, therefore, recovered fine from them. The petitioner was also interrogated and he was ultimately, furnished with the chargesheet, wherein allegations were made that he had permitted the passengers to travel without ticket and/or after receiving money, had not issued tickets and that he had shown complete negligence towards his duty. It may be noted here, that the total fare of non issued 16 tickets would come to Rs.20=00 and according to the respondents, the petitioner had thereby caused monetary loss to the Corporation. During the inquiry, these allegations were found to be proved. It was also observed by the Inquiry Officer that the petitioner was a experienced conductor and had put in about 17 years of service and despite that he had shown such a carelessness towards his duties, which resulted into monetary loss to the Corporation. On the basis of the finding, the competent authority at Surat, issued showcause notice, why his service should not be terminated. However, ultimately, the competent authority, vide order dated 30th November, 1994 lower down six steps of the basic pay i.e. from Rs.1623=00 to Rs.1371=00.

1.2. The petitioner being aggrieved by the said order preferred Second Appeal before the appellate authority. After perusing the entire record, it thought it fit to modify the said order and instead of lower down six steps punishment of lower down, five steps was imposed. The order of the Divisional Director who is the competent authority is dated 6th April, 1996. It is this order which is now under challenge.

2. It is submitted by Mr. M. H. Rathod learned advocate appearing for the petitioner that the distance

between two places is very less i.e. hardly about 3 k.m. Further that on that day, the petitioner was not feeling well and, therefore, there was all possibility what the petitioner said was true. According to the petitioner, there were about 16 passengers and before he could issue tickets to them, the bus was checked by the raiding squad and they had found the aforesaid facts. According to him, in the circumstances, no default was committed by the petitioner and the order of punishment was not just and proper and it deserved to be quashed and set aside.

2.1. No submissions have been advanced on behalf of the respondents, since no one is present on its behalf.

3. Having gone through the record of the petition and in particular, finding given by the Inquiry Officer, and also the impugned order, it appears that the petitioner has been rendering service as conductor for about 17 years. It also appears that when the checking was done, the only fact that was found was that no tickets were issued to those passengers. However, there is no evidence or even allegation to the effect that from the petitioner excess amount was found. In other words, it is also clear from the record the petitioner had not collected any amount from those passengers, without issuing tickets. Thus, there does not seem to be any monetary defalcation committed by the petitioner. It further appears that there was no past history of the petitioner though at that time he has been serving for 17 years with Corporation. If the past record of the petitioner had not been satisfactory, certainly, that would have been placed on the record, but that has not been done. Further that the very fact that even today, he has been continued in service as conductor as per the statement made at bar by Mr. Rathod, shows that so far his integrity is concerned, the respondent - Corporation has no doubt about it.

4. Normally, this Court would not exercised its writ jurisdiction on the question of legality or the propriety of the order of the punishment. However, if on perusal of the material on record, it is found that the impugned order was disproportionate to the nature of misconduct alleged against the delinquent, this Court can certainly interfere. The petitioner in paragraph 6 of his petition has spelt out the monetary loss which he is likely to suffer in his service and likely to have adverse effect on his retiral benefits. This averment is not controverted by the other side. If that be so, then I have to accept the version of the petitioner. It shows that for act of negligence and not issuing tickets, and

thereby causing monetary loss to the Corporation to the extent of Rs.20=00, the petitioner will have to ultimately suffer monetary loss of around Rs. Three lakhs. As already state above, in reality, no monetary loss is caused to the respondent - Corporation because it has already recovered fine from the ticketless passengers. Thus, when substantial monetary loss is likely to be caused to the petitioner, on account of penalty imposed by the second appellate authority, the order of penalty is required to be interfered with.

5. Having regard to the facts and circumstances of the case, in my opinion, ends of justice will meet, if instead of lowering down five steps from the basic pay to lowering down to two steps from the basic pay with retrospective financial benefit from the date of filing of this petition and it is ordered accordingly. The respondent - Corporation is, therefore, ordered to comply with the aforesaid direction on or before 30th June, 2004.

The petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

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